

E-132, 299/SA-88-996 ORDER GRANTING INTERIM SERVICE RIGHTS AND  
REQUIRING FURTHER FILINGS

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Don Storm  
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Chair  
Commissioner  
Commissioner  
Commissioner  
Commissioner

In the Matter of the Application  
of the City of Rochester to  
Adjust its Service Area Boundary  
with People's Cooperative Power  
Association

ISSUE DATE: March 10, 1993

DOCKET NO. E-132, 299/SA-88-996

ORDER GRANTING INTERIM SERVICE  
RIGHTS AND REQUIRING FURTHER  
FILINGS

**PROCEDURAL HISTORY**

**I. Proceedings to Date**

This case is a consolidation of several dockets involving service area boundary and compensation disputes between two neighboring utilities, People's Cooperative Power Association, Inc. (People's or the co-op) and the City of Rochester. The case was first referred to the Office of Administrative Hearings for contested case proceedings on September 14, 1989. Since then the Commission has consolidated related dockets with this proceeding and has referred other dockets for factfinding on this proceeding's record. The Administrative Law Judge and the parties have concurred in these consolidations and referrals.

At the prehearing conference at the beginning of this proceeding, the parties and the Administrative Law Judge agreed that the most efficient way to proceed would be to conduct evidentiary hearings in two phases. Phase I would determine the original service area boundaries of the two utilities, their current service area boundaries, and whether the circumstances of any unauthorized service extensions warranted a referral for penalty proceedings. Phase II would determine appropriate compensation for the City's acquisition of all portions of People's' service territory within the Rochester city limits.

Phase I of the proceeding has been completed. On December 28, 1990 the Commission issued its INTERIM ORDER DETERMINING 1975 SERVICE AREA BOUNDARIES, DETERMINING SERVICE AREA CHANGES SINCE 1975, AND REFERRING SERVICE AREA VIOLATION TO THE ATTORNEY GENERAL. At the conclusion of Phase I all parties agreed, with the concurrence of the Commission, that

reconsideration or other post-hearing review of decisions made in the docket would occur after issuance of the final Order determining all issues in the proceeding. Phase II is in progress.

To resolve compensation issues it was necessary to determine the original boundaries between the two utilities and to identify areas the City had purchased from People's since those boundaries were set. The Commission did this in an Order dated December 28, 1990.<sup>1</sup> It was also necessary to decide the City's claims that People's' compensation claims for specified areas were barred by laches, waiver, and promissory estoppel. In an Order dated August 7, 1992 the Commission found that People's' claims for compensation for certain areas were barred by laches.<sup>2</sup> Although these two Orders determined that Rochester owed People's no compensation for specific areas, they did not address the issue of which utility should serve new customers in these areas.

On November 25, 1992 the City filed a petition to change the official service area maps to reflect the decisions made in the December 28, 1990 and August 7, 1992 Orders. On December 18, 1992 People's and the Department of Public Service (the Department) filed comments opposing the City's proposal. On December 31, 1992 the City made a reply filing.

The matter came before the Commission on February 18, 1993.

## **FINDINGS AND CONCLUSIONS**

### **II. Factual and Statutory Background**

Under Minn. Stat. § 216B.44 (1992) a municipal utility may acquire the right to serve any area within its city limits upon paying appropriate compensation to the displaced utility. The City of Rochester has announced its decision to acquire all portions of People's' service territory within its city limits. Because the two utilities' service areas are intertwined, because they have disregarded service area boundaries in the past, and because large numbers of customers are involved, this decision has led to a lengthy and complex compensation proceeding. In dealing with issues in that proceeding as they arise, the Commission has determined that service rights to certain areas

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<sup>1</sup> INTERIM ORDER DETERMINING 1975 SERVICE AREA BOUNDARIES, DETERMINING SERVICE AREA CHANGES SINCE 1975, AND REFERRING SERVICE AREA VIOLATION TO THE ATTORNEY GENERAL.

<sup>2</sup> ORDER DETERMINING MOTION FOR PARTIAL SUMMARY DISPOSITION.

claimed by People's have passed to the City under a compensation agreement the two utilities have since rescinded. The Commission has also determined that People's' compensation claims for certain areas are barred by laches. People's disagrees with both these determinations and may appeal them when the case ends.

In the meantime, the City of Rochester continues to grow, and new customers continue to request electric service. The City contends it should provide that service in the areas the Commission has determined it may acquire without compensation. The City asks that the official service area maps be changed to make it the assigned utility for those areas. People's and the Department oppose such a change, saying permanent changes to the official service area maps should not be made on the basis of interim decisions.

### **III. Commission Action**

The Commission agrees with People's and the Department that it would be premature to change the official service area maps on the basis of unappealed, and unappealable, interim Orders. The statute governing municipal utilities' acquisitions of other utilities' service areas provides that the utility being displaced shall continue providing service until compensation has been determined. Minn. Stat. § 216B.44 (1992). In this case compensation has not yet been finally determined; the general rule is therefore that People's should continue to serve. At the same time, however, the statute also provides as follows:

. . . the electric utility being displaced, serving the annexed area, shall not extend service to any additional points of delivery within the annexed area if the commission, after notice and hearing, with due consideration of any unnecessary duplication of facilities, shall determine that the extension is not in the public interest.

Service rights awarded under this provision are called "interim service rights" because the municipal utility is authorized to serve during the period that compensation is being determined. The official service area maps are not changed. Since compensation has not been determined in this case, the Commission will consider the City's petition under the interim service provisions of the statute. The Commission will grant interim service rights to the City.

The Commission finds that it makes little sense for People's to serve new customers in areas the Commission has determined belong to the City or can be acquired by the City without compensation. Allowing People's to serve such areas conflicts with the goals of the service area statutes -- to encourage the development of

coordinated statewide electric service, to avoid unnecessary duplication of utility facilities, and to promote the provision of economical, efficient, and adequate electric service throughout the state. Minn. Stat. § 216B.39, subd. 2 (1992). Assuming the decisions of the Commission stand, allowing People's to serve would cause duplication of facilities, customer confusion and inconvenience, and service disruptions, when service shifts to Rochester at the end of the proceeding. It could hurt People's' ratepayers by encouraging People's to make investments that would not be used long enough to justify their cost. It could hurt Rochester ratepayers by delaying the receipt of revenues that would contribute to the fixed costs of their system.

The Commission concludes it would contravene the public interest for People's to serve new points of delivery in areas covered by the Orders of December 28, 1990 and August 7, 1992. The Commission will grant interim service rights to those areas to the City of Rochester.

#### **IV. Further Filings Required**

The parties are not in complete agreement on which areas are covered by the Orders of December 28, 1990 and August 7, 1992. They have also stated that it may be more efficient for People's to extend new service to customers within specific parts of the covered areas until the end of the proceeding.

It is important for utilities and the customers they serve to know which utility has the right and duty to serve any particular area. To eliminate confusion, the Commission will require the parties to make a joint filing listing areas they agree should receive interim service from one utility or the other and areas on which they are unable to agree. The Commission will also require individual filings explaining the parties' positions on the areas on which they are unable to agree. This procedure should minimize future disputes and protect the public interest in promptly receiving electric service on request.

#### **ORDER**

1. The City of Rochester is granted interim service rights to all areas found to have transferred to it under the Commission's Order of December 28, 1990.

2. The City of Rochester is granted interim service rights to all areas for which the Commission found compensation claims barred under the Commission's Order of August 7, 1992.
3. Within 30 days of the date of this Order, the City of Rochester and People's Cooperative Power Association shall make a joint filing listing all areas they agree should receive interim service from one utility or the other and all areas on which they are unable to agree.
4. Within 30 days of the date of this Order, the City of Rochester and People's Cooperative Power Association shall make individual filings explaining their positions on which utility should serve the areas on which they are unable to agree.
5. The Department of Public Service shall file any responsive comments within 15 days of the above filings.
6. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Richard R. Lancaster  
Executive Secretary

(S E A L)